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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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John A. Dyjach

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06/09/2006

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EXAMINER

SMITH, TERRI L

ART UNIT

PAPER NUMBER

3762

DATE MAILED: 06/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/730,760

Applicant(s)

DYJACH ET AL.

Examiner

Terri L. Smith

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-60 is/are pending in the application.
- 4a) Of the above claim(s) 1-28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 29-60 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 October 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office Action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 21 April 2006 has been entered.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office Action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the Applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the Applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 29–43, 45–56, and 58–60 are rejected under 35 U.S.C. 102(e) as being anticipated by Chinchoy, United States Patent Application Publication U.S. 2004/0172077.

4. Regarding claims 29, 49, and 54, Chinchoy discloses a plurality of channels adapted to interface with a plurality of electrodes on at least one lead (Figs. 5–6; element 14), wherein the plurality of interface channels are adapted to deliver pacing pulses to at least one of the plurality of electrodes and to receive sensed cardiac signals from at least one of the plurality of electrodes as part of a prescribed cardiac resynchronization therapy (CRT) (paragraph [0055], lines 1–4; paragraph [0056], lines 1–5); a memory embedded with computer instructions (Fig. 6, element 102); a controller (102) adapted to communicate with a plurality of interface channels and with a

Art Unit: 3762

memory (paragraph [0055], lines 5–10), a controller adapted to control a prescribed CRT to improve coordination of ventricular contraction (paragraph [0015]), a prescribed CRT including pacing a left ventricle cardiac site at a predetermined time interval with respect to a cardiac event at a second cardiac site, a cardiac event including a paced cardiac event at a second cardiac site or a sensed intrinsic cardiac event at a second cardiac site (Figs. 1–2 and 7; paragraph [0014], lines 8–10; paragraph [0031], lines 4–9; paragraph [0032]; paragraph [0015]; paragraph [0057], lines 1–6 and 11–15; paragraphs [0065]–[0066]), a controller being adapted to control delivery of pacing pulses, processing of sensed signals, and recording of data to memory, data including data indicative of whether the left ventricle cardiac site was paced at a predetermined time interval with respect to a cardiac event at a second cardiac site (Figs. 1–2 and 6–7; paragraph [0061], lines 1–13); and a communication circuit (124 in combination with all other circuitry) adapted to transmit recorded data to an external device for presentation of data trends useful to assess an efficacy of prescribed CRT (Figs. 1–2 and 8), wherein data trends include at least one data parameter associated with time (Figs. 1–2; paragraph [0031], lines 4–7; paragraph [0033], lines 4–7) and to communicate with a controller and to transmit and receive wireless communication signals (Fig. 6; elements 124 and 102); and a programmer (Fig. 6) and a monitor (paragraph [0071], lines 1–2; It is inherent that a personal computer has a monitor)

5. Chinchoy discloses data includes a chronic, ambulatory data (claims 30, 50 and 55) (paragraph [0030], lines 2–10; paragraph [0053], lines 1–3 and 8–13); a right ventricle interface channel, a left ventricle interface channel, and a right atrium interface channel (claim 31) (Fig. 5); a controller is adapted to do the following in or to memory: record prescribed (claims 32 and 58) and realized (claims 33 and 59) CRT data and time information in memory (paragraph

Art Unit: 3762

[0034]; paragraph [0055], lines 4–10; paragraph [0061], lines 1–13 and 20–26; paragraph [0062], lines 4–9), record a pacing mode and time information (claim 34) (paragraph [0047], lines 6–7 and 9–10; Examiner is interpreting the teaching of ‘programmed’ to be the same as recording.), record when a device is operating in an atrial tracking mode (claim 35) (paragraph [0047], lines 6–7 and 9–10); trend samples of data indicative of whether the left ventricle cardiac site was paced at the predetermined time interval with respect to a cardiac event at a second cardiac site including to trend N samples per unit time (claim 36) (Figs. 1–2 and 7–8; paragraph [0031], lines 4–7; paragraphs [0032]–[0033]), N samples per unit time until a predetermined change occurs in (claim 37) (Figs. 1 and 7; paragraph [0046], lines 11–18) or threshold is reached (claim 38) (Figs. 1–2 and 7–8; paragraph [0031], lines 4–7; paragraphs [0032]–[0033]) related to delivered CRT (claim 38) or a predetermined event occurs (claim 39) (Figs. 1–2 and 7–8; paragraph [0031], lines 4–7; paragraphs [0032]–[0033]) and then trend M samples per unit time (claims 37–39) (Figs. 1 and 7), to trend M samples per unit time after initiation of trigger (claim 40) (Figs. 1 and 7; paragraph [0061], lines 8–13), to trend a first parameter before a trigger and a second parameter after the trigger (claim 41) (Figs. 1 and 7; paragraph [0061], lines 8–13; paragraph [0073]), a value corresponding to CRT delivery (claim 42) (Figs. 2 and 7), ventricular pacing at least one from a group consisting of left ventricular pacing (claim 43) (Figs. 2 and 7), capture (claim 45) (Figs. 7–8; paragraph [0036], lines 6–8; paragraph [0065], lines 9–14), a value above a programmed rate being at least one from a group consisting of a programmed maximum pacing rate (claim 46) (Fig. 2; paragraph [0032], lines 5–9), a mode of operation being at least one from a group consisting of a tracking mode (claim 47) (paragraph [0047], lines 9–10), and a CRT delivery results being at least one from a group consisting of CRT therapy that was

Art Unit: 3762

successfully delivered (claim 48) (Fig. 7) and each value being at least from a percentage value (claims 42–43 and 45–48) (Figs. 2 and 7; Examiner is considering the average as a percentage.); memory of a CRM device includes controller instructions to be executed by a controller of a CRM device to trend data samples (claim 51) (Fig. 6); memory of a programmer includes controller instructions to be executed by a controller of a programmer to trend data samples (claim 52) (Fig. 6); information displayed on a monitor includes a graph of trended data (claims 53 and 56) (Figs. 2 and 4A–4B; paragraph [0014], lines 5–10); means for detecting a trigger and trending data samples based on a trigger (claim 60) (paragraph [0047], lines 6–11; paragraph [0061], lines 8–13).

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office Action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the Examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the Examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Art Unit: 3762

8. Claims 44 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chinchoy as applied to claim 41 above, and in view of Schroepel et al., U.S. Patent 5,749,900.

9. Chinchoy discloses the essential features of the claimed invention except for atrial tachycardia. Schroepel et al. disclose atrial tachycardia (Fig. 7; column 11, lines 40–58) to allow for selection and initiation of appropriate therapy based on heart rate variability in a forecast cardiac event. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the invention of Chinchoy to include atrial tachycardia, as taught by Schroepel et al. to select and initiate appropriate therapy for a cardiac patient.

10. Claim 57 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chinchoy United States Patent Application Publication U.S. 2004/0172077.

11. Chinchoy discloses the essential features of the claimed invention except for a table of trended data. It is well known in the art to use a table to display information because it makes reading and analyzing patient data easy, quick, and efficient. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the invention of Chinchoy to include a table of trended data to allow for quick, efficient, and easy assimilation of patient data.

### *Conclusion*

12. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Terri L. Smith whose telephone number is 571-272-7146. The Examiner can normally be reached on Monday - Friday, between 7:30 a.m. - 4:00 p.m..

Art Unit: 3762

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Angela Sykes can be reached on 571-272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

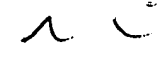
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TLS

June 5, 2006

5 June 2006



GEORGE R. EVANISKO  
PRIMARY EXAMINER

6/5/6